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EXAMINER

LANEAU, RONALD

ART UNIT PAPER NUMBER

3627

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/603,677

Applicant(s)


MUELLER ET AL.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9,50,52-59,70-74,77 and 101 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9,50,52-59,70-74,77 and 101 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/17/2004 has been entered.

2. Claims 10-49, 51, 60-69, 75, 76, 78-100 and 102-112 have been canceled and claims 1-9, 50, 52-59, 70-74, 77 and 101 remain pending.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-8, 50-52, 55-59, and 70-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeff Glickman, 10 Infomercial Facts you need to know (Supplement: The Infomercial Special Sourcebook Issue), Adweek Eastern Edition, vol. 34, No. 10, March 8, 1993, Pg 28(5) in view of Fiorini, No Place for Penny?/smallest Count Doesn't Make Cents to Some, USA Today, July 29, 1994, Section'. News.

As per claim 1, Glickman teaches a method for conducting a transaction (the primary aim of any infomercial that is the selling of a product), comprising: Receiving information for a transaction (the primary aim of any infomercial that is selling a product is to obtain credit card orders, i.e. receiving information for a transactional; Determining a pool of at least one possible supplemental product (inbound callers present an excellent opportunity to offer additional products while they call in for your primary television offer - this offer of additional products or services is called an upsell, i.e. at least one product forms the pool);

Scoring at least one supplemental product in said pool (Glickman teaches that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives (Rule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . . rule 4), the greater the difference between the product offered as an upsell and the original offer, the lower the conversion rate (rule 5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each

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sequential upsell offer (Rule 9). Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of 25% to 50%, will produce conversions as high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products in a group or as phrased by Applicant a pool, inherently based at least on profit of the at least one possible supplemental product.

Selecting at least one supplemental product from said pool for said transaction (with multiple upsells, i.e. a plurality of supplemental products, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer, i.e. they are scored by relevance (Rule 9)) and

Providing an indication of said at least one supplemental product selected from said pool (with multiple upsells, i.e. a plurality of supplemental products, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer, i.e. they are scored by relevance (Rule 9)).

Glickman does not teach determining an offer amount for a supplemental product based on at least in part on an amount of change due.

Fiorini discloses a bill that was before Congress to phase out the penny by rounding off cash sales and Curt Sheely, the general manager at Christie's Cafe and Bakery already rounds up or down to avoid taking pennies and one way to round it up is to offer to customers a product for the value of the change due.

It would have been obvious to one of ordinary skill in the art to include the phasing out of the penny by offering a product for the change due as disclosed by Fiorini into the system of

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Glickman because it would allow the convenience Stores to spend less hours counting, rolling and banking the pennies and therefore saving hours of penniless counting.

As per claim 2, Glickman teaches selecting at least one supplemental product from a plurality of possible supplemental products (with multiple upsells, i.e. a plurality of supplemental products, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer, i.e. they are scored by relevance rule 9)).

As per claim 3, Glickman teaches scoring each supplemental product in said plurality of supplemental products (with multiple upsells, i.e. a plurality of supplemental products, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer, i.e. they are scored by relevance rule 9)).

As per claim 4, Glickman teaches that the scoring uses at least one of the following:

Scoring based on popularity of one or more products for a group of one or more users;

Scoring based on discount; and

Composite scoring.

Glickman teaches that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives (Rule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . . (Rule 4), the greater the difference between the product offered as an upsell and the original offer, the lower the conversion rate (Rule 5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer rule 9). Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of

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25% to 50%, will produce conversions as high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products, i.e. the results of the preference for related products, discounts and composite scoring, utilizing the rules to produce maximum conversions.

As per claims 5 and 8, Glickman does not specifically teach establishing at least one predetermined scoring threshold/selecting one supplemental product that has a score that at least equals a predetermined threshold. However, Glickman does teach that upsells for related products, i.e. supplemental products, will produce a conversion as high as 50%, i.e. sale, at a discount of 25%-50%. Note that this high of a conversion implies that if you are upselling a related product you want to have a predetermined threshold for a discount of at least 25% in order to maximize the conversion without any market testing. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method of offering supplemental products as taught by Glickman to include one supplemental product that has a score at least equal to a predetermined threshold/establishing at least one predetermined scoring threshold because Glickman, himself teaches that conversion rate increases to as high as 50% as the discount rate reaches 25%-50% and can go higher. Steps to increase the sale of a supplemental product, i.e. increase the revenue stream, and represent an obvious modification to the prior process taught by Glickman.

As per claim 6, Glickman teaches selecting a supplementary product comprises choosing at least one of the following:

An additional supplemental product (Inbound callers present an excellent opportunity to offer additional products while they call in for your primary television offer);

A replacement product; and

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An upgrade supplemental product (upsells for related products, i.e. deluxe . . .).

As per claim 7, Glickman teaches providing at least one supplemental product (never give shipping and handling free on an upsell when you can reduce the offer price the same amount (Rule 8), the initial package must deliver the promise made on the initial show, with such factors as . . . timely delivery); and

Arranging for said at least one supplemental product to be provided (never give shipping and handling free on an upsell when you can reduce the offer price the same amount (Rule 8), the initial package must deliver the promise made on the initial show, with such factors as . . . timely delivery).

As per claim 50, Glickman teaches a method for conducting a transaction (the primary aim of any infomercial that is selling a product is to obtain credit card orders), comprising:

Receiving information associated with the sale of a product (the primary aim of any infomercial that is selling a product is to obtain credit card orders, i.e. receiving information associated with the sale of a product; teaches continuity and the factors related to the customer re-order performance which would require receiving information associated with the sale of the product;

Identifying a supplemental product based at least in part on said product (the number of people accepting the upsell is a function of many factors including the degree of similarity of the upsell product category to the front-end offer; the closer the product is to the original offer, such as a deluxe or complementary upsell, the higher the conversion (Rule 2), the greater the difference between product offered as an upsell and the original offer, the lower the conversion



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(Rule 5), with multiple upsells, always upsell the most related product first, then go to the least related - conversions always decrease with each sequential upsell offer (Rule 9);

Determining an offer amount for said supplemental product mule 4 and Note discussing percentage of upsells for related products teaches the percentages for determining an offer amount depending upon the product);

Providing an indication of an offer to sell said supplemental product at said offer amount (never give shipping and handling free on an upsell when you can reduce the offer price the same amount, i.e. provide an indication of an offer to sell said supplemental offer at said offer amount; additionally teaches conversion rates for upsells which would necessarily require providing an offer to sell supplemental products at an offer amount); and

Receiving an indication of an acceptance to purchase said supplemental product at said offer amount (teaches that the rates of conversion range from 25-40% for the First Product and decrease from there, i.e. an indication of acceptance to purchase supplemental products at said offer amounts).

Glickman does not teach determining an offer amount for a supplemental product based on at least in part on an amount of change due.

Fiorini discloses a bill that was before Congress to phase out the penny by rounding off cash sales and Curt Sheely, the general manager at Christie's Cafe and Bakery already rounds up or down to avoid taking pennies and one way to round it up is to offer to customers a product for the value of the change due.

It would have been obvious to one of ordinary skill in the art to include the phasing out of the penny by offering a product for the change due as disclosed by Fiorini into the system of

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Glickman because it would allow the convenience Stores to spend less hours counting, rolling and banking the pennies and therefore saving hours of penniless counting.

As per claim 51, Glickman does not teach that the offer amount is based, at least in part, on at least one of an amount of change due or a round-up amount. Fiorini teaches that there is a growing aversion by retailers and consumers who'd rather not bother with pennies and some countries have done away with their smallest coin because it costs more to make than it was worth. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have based an offer amount at least in part on the amount of change due or a round-up amount in the method of Glickman as taught by Fiorini because change due or a round-up amount can be more costly than incorporating them into the offer amount as suggested by Fiorini, and by basing the offer amount of the change due, you can impact upon inventory levels and do away with extra inventory.

As per claim 52, Glickman teaches identifying a supplemental product includes determining at least one product category involved in the transaction (The number of people accepting the upsell is a function of many factors including the degree of similarity of the upsell product category to the front-end offer; if upsells are of different product category, results will be lower than simple (accessory' or unit upsells).

As per claim 55, Glickman teaches selecting a supplemental product by determining a pool of at least one possible supplemental product (with multiple upsells, i.e. a plurality of supplemental products, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer, i.e. they are scored by relevance (Rule 9)).

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As per claim 56, Glickman teaches scoring at least one possible supplemental product (Glickman teaches that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives (Rule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . . (Rule 4), the greater the difference between the product offered as an upsell and the original offer, the lower the conversion rate (Rule 5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer (Rule 9). Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of 25% to 50%, will produce conversions as high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products, i.e. the results of the preference for related products, discounts and composite scoring, utilizing the rules to produce maximum conversions.).

As per claims 57 and 58, Glickman teaches a method for conducting a transaction (the primary aim of any infomercial that is the selling of a product), comprising:

Receiving information for a transaction, said information including a tender amount and a transaction total (the primary aim of any infomercial that is selling a product is to obtain credit card orders, i.e. receiving information for a transaction, inbound callers present an excellent opportunity to offer additional products while they call in for your primary television offer, i.e. an upsell, price of upsells compared to front-end offer, i.e. tender amount - the front-end offer + price of upsells = transaction total; the offer amount can be the difference between said tender amount and said transaction total);

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Identifying a supplemental product based at least in part on said product (the number of people accepting the upsell is a function of many factors including the degree of similarity of the upsell product category to the front-end offer; the closer the product is to the original offer, such as a deluxe or complementary upsell, the higher the conversion (Rule 2), the greater the difference between product offered as an upsell and the original offer, the lower the conversion (Rule 5), with multiple upsells, always upsell the most related product first, then go to the least related - conversions always decrease with each sequential upsell offer (Rule 9);

Providing an indication of an offer to sell said supplemental product at said offer amount (never give shipping and handling free on an upsell when you can reduce the offer price the same amount, i.e. provide an indication of an offer to sell said supplemental offer at said offer amount; additionally teaches conversion rates for upsells, which would necessarily require providing an offer to sell supplemental products at an offer amount); and

Receiving an indication of an acceptance to purchase said supplemental product at said offer amount (teaches that the rates of conversion range from 25-40% for the First Product and decrease from there, i.e. an indication of acceptance to purchase supplemental products at said offer amounts).

Glickman does not teach determining an offer amount for a supplemental product based on at least in part on an amount of change due.

Fiorini discloses a bill that was before Congress to phase out the penny by rounding off cash sales and Curt Sheely, the general manager at Christie's Cafe and Bakery already rounds up or down to avoid taking pennies and one way to round it up is to offer to customers a product for the value of the change due.

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It would have been obvious to one of ordinary skill in the art to include the phasing out of the penny by offering a product for the change due as disclosed by Fiorini into the system of Glickman because it would allow the convenience Stores to spend less hours counting, rolling and banking the pennies and therefore saving hours of penniless counting.

As per claim 59, Glickman teaches scoring at least one possible supplemental product (Glickman teaches that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives (Rule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . . (Rule 4), the greater the difference between the product offered as an upsell and the original offer, the lower the conversion rate (Rule 5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer (Rule 6). Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of 25% to 50%, will produce conversions as high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products, i.e. the results of the preference for related products, discounts and composite scoring, utilizing the rules to produce maximum conversions.

As per claim 70, Glickman teaches a method for conducting a transaction (the primary aim of any infomercial that is the selling of a product), comprising:

Processing a sale of a product (the primary aim of any infomercial that is the selling of a product is to obtain credit card purchases, i.e. processing the sale of the product);

Receiving a tender amount for said product (the primary aim of any infomercial that is selling a product is to obtain credit card orders, i.e. receiving information for a transaction,

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inbound callers present an excellent opportunity to offer additional products while they call in for your primary television offer, i.e. an upsell, price of upsells compared to front-end offer, i.e. tender amount - the front-end offer + price of upsells = transaction total);

Selecting a supplemental product based at least in part on said product and said tender amount (The number of people accepting the upsell is a function of many factors, including the price of upsells compared to the front-end offer, i.e. tender amount, the degree of similarity to the front-end offer, The following 10 rules are good guidelines in the desir of Inbound Upsells, the closer the product is to the original offer, such as a deluxe or complementary upsell, the higher the conversion (Rule 2), the lower the upsell as a percentage of the front-end price point, the higher the upsell conversion rate (Rule 4), the selection of the supplemental product from a plurality of products is inherently being based at least on profit of the at least one possible supplemental product as claimed; and

Providing an indication of an offer to sell said supplemental product at an offer amount (never give shipping and handling free on an upsell when you can reduce the offer price the same amount, i.e. provide an indication of an offer to sell said supplemental offer at said offer amount; additionally teaches conversion rates for upsells which would necessarily require providing an offer to sell supplemental products at an offer amount).

Glickman does not teach determining an offer amount for a supplemental product based on at least in part on an amount of change due.

Fiorini discloses a bill that was before Congress to phase out the penny by rounding off cash sales and Curt Sheely, the general manager at Christie's Cafe and Bakery already rounds up

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or down to avoid taking pennies and one way to round it up is to offer to customers a product for the value of the change due.

It would have been obvious to one of ordinary skill in the art to include the phasing out of the penny by offering a product for the change due as disclosed by Fiorini into the system of Glickman because it would allow the convenience Stores to spend less hours counting, rolling and banking the pennies and therefore saving hours of penniless counting.

As per claim 71, Glickman teaches that the offer amount is based on at least one of:

A cost for said at least one supplemental product; and

A fixed amount

(The number of people accepting the upsell is a function of many factors, including the price of upsells compared to the front-end offer, i.e. tender amount, the incentive and or perceived discount given with the upsell, The following 10 rules are good guidelines in the desir of Inbound Upsells, the conversion rate increases with higher upsell discounts and better incentives (Rule 3), the lower the upsell as a percentage of the front-end price point, the higher the upsell conversion rate (Rule 4), i.e. cost for supplemental product, which according to the formula can also be a fixed amount).

As per claim 72, Glickman teaches selecting a supplemental product including associating a score with said supplemental product Glickman teaches that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives rule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . . rule 4), the greater the difference between the product offered as an upsell and the

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original offer, the lower the conversion rate (Rule5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer (Rule 9). Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of 25% to 50%, will produce conversions as high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products, i.e. the results of the preference for related products, discounts and composite scoring, utilizing the rules to produce maximum conversions.).

As per claim 73, Glickman teaches establishing a pool of at least one possible supplemental product (Glickman teaches inbound callers present an excellent opportunity to offer additional products while they call in for your primary television offer - this offer of additional products or services is called an upsell, i.e. at least one product from the pool, that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives mule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . .mule 4), the greater the difference between the product offered as an upsell and the original offer, the lower the conversion rate (Rule5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer (Rule 9). Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of 25% to 50%, will produce conversions as high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products in a group or as phrased by Applicant a pool, i.e. the results of the preference for related products, discounts and composite scoring, utilizing the rules to produce maximum conversions).



As per claim 74, Glickman teaches scoring at least one possible supplemental product (Glickman teaches inbound callers present an excellent opportunity to offer additional products while they call in for your primary television offer - this offer of additional products or services is called an upsell, i.e. at least one product forms the pool, that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives (Rule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . . (Rule 4), the greater the difference between the product offered as an upsell and the original offer, the lower the conversion rate (Rule5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer mule 9). Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of 25% to 50%, will produce conversions ms high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products in a group or as phrased by Applicant a pool, i.e. the results of the preference for related products, discounts and composite scoring, utilizing the rules to produce maximum conversions).

6. Claims 9, 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glickman as applied to claim 50 above, and further in view of Lerner (5,526,257).

Glickman discloses as set forth above.

However, Glickman does not explicitly teach that the identification includes creating a product group involved in the transaction. Lerner teaches the utilization of the category of the product (group), the class of the product (category), etc involved in a transaction to evaluate the

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successfulness of an article, such as jewelry (Fig. 12a, 12b; col. 1, lines 8-14) . Additionally, Lerner teaches that most businesses recognize the clear advantages of providing customers the ability to purchase products on an impulsive basis and that utilizing the particular relationships that exist between successful articles will permit extrapolation of which combinations of articles might be sold together (Abstract; col. 1, lines 8-14, lines 29-30, col.3, lines 2-7 and 61-64). Moreover, the examiner notes that it is well known in the art to divide products into product groups, sub-groups, etc. or whatever you want to label the divisions for a plethora of purposes, including databases storage/querying/retrieval, filtering, identification, ease of use of the system/method for a merchant/consumer, etc. and that this has been done by in the retail environment for a long period of time. Examples of this include the fast food (menus, sandwiches, beverages, etc.), grocery (dairy, cheeses, frozen foods, meals, desserts) and department store models (clothing, men's, women's, children's, home furnishings, linens, china). Thus, it would have been obvious to one of ordinary skill in the art to have included product groups in the indicating step of Glickman as taught by Lerner or as well known in the art for the reasons set forth in Lerner or to optimize the identification step and facilitate the use of the system.

As per claim 54, Glickman discloses identifying a supplemental product includes determining at least one complementary product category involved in the transaction (The number of people accepting the upsell is a function of many factors including the degree of similarity, i.e. complementary of the upsell product category to the front-end offer; if upsells are of different product category, results will be lower than simple "accessory" or unit upsells).

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7. Claims 77 and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeff Glickman, 10 Infomercial Facts you need to know (Supplement: The Infomercial Special Sourcebook Issue), Adweek Eastern Edition, vol. 34, No. 10, March 8, 1993, Pg 28(5) in view of Fiorini, No Place for Penny?/smallest Count Doesn't Make Cents to Some, USA Today, July 29, 1994, Section News. And further in view of Walker et al (US 5,884,272).

As per claims 77 and 101, Glickman teaches a method for conducting a transaction (the primary aim of any infomercial that is the selling of a product), comprising: Receiving information for a transaction (the primary aim of any infomercial that is selling a product is to obtain credit card orders, i.e. receiving information for a transactional; Determining a pool of at least one possible supplemental product (inbound callers present an excellent opportunity to offer additional products while they call in for your primary television offer - this offer of additional products or services is called an upsell, i.e. at least one product forms the pool);

Scoring at least one supplemental product in said pool (Glickman teaches that the number of people accepting the upsell is a function of many factors including price of upsells compared to the front-end offer, conversion rate increases with higher upsell discounts and better incentives (Rule 3), the lower the upsell as a percentage of the front-end price point, the higher the conversion rate . . . rule 4), the greater the difference between the product offered as an upsell and the original offer, the lower the conversion rate (rule 5), with multiple upsells, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer (Rule 6. Note the percentage of upsells for related products, i.e. deluxe or complimentary products, at discount of 25% to 50%, will produce conversions as high as 50% or more. Thus, Glickman teaches scoring based on popularity of one or more products in a group or

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as phrased by Applicant a pool, inherently based at least on profit of the at least one possible supplemental product.

Selecting at least one supplemental product from said pool for said transaction (with multiple upsells, i.e. a plurality of supplemental products, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer, i.e. they are scored by relevance (Rule 9)) and

Providing an indication of said at least one supplemental product selected from said pool (with multiple upsells, i.e. a plurality of supplemental products, always sell the most related product first, then go to the least related as conversions always decrease with each sequential upsell offer, i.e. they are scored by relevance (Rule 9)).

Glickman does not teach determining an offer amount for a supplemental product based on at least in part on an amount of change due.

Fiorini discloses a bill that was before Congress to phase out the penny by rounding off cash sales and Curt Sheely, the general manager at Christie's Cafe and Bakery already rounds up or down to avoid taking pennies and one way to round it up is to offer to customers a product for the value of the change due.

Neither Glickman nor Fiorini teaches a processor connected to a memory and a communication port to receive information for a transaction.

Walker teaches a system having a processor (CPU 305) connected to a communication port 340 and a memory (information storage 370) to receive information for a transaction (fig. 3).

It would have been obvious to one of ordinary skill in the art to include the phasing out of the penny by offering a product for the change due as disclosed by Fiorini into the system of

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Glickman because it would allow the convenience Stores to spend less hours counting, rolling and banking the pennies and therefore saving hours of penniless counting. And it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the information storage as connected in the system of Walker into the combined system of Glickman and Fiorini because it would provide a system that allows users to exercise control over the release of information to others and efficient anonymous communication.

### *Response to Arguments*

8. Applicant's arguments filed on 11/17/2004 have been fully considered but they are not persuasive.

Applicant argues that Glickman does not disclose "profit or profitability is considered in scoring supplemental product, selecting a supplemental product or identifying a supplemental product." Contrary to applicant's arguments, profit has been at the forefront of all retail sales and anything that sells no matter how much it is, it contributes to the profitability of the store. In other words, when the salesman offers to a customer an item for the change due, it's because it helps the owner of the store to keep moving said particular items off the shelves and therefore make a greater profit. As far as the new added limitations, they are met by the Fiorini reference (see above). Applicant further argues that the obviousness rejections fail to set forth a motivation to combine or modify references. Applicant has not provided any reasons against any of the motivations to combine and the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed

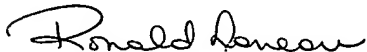
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invention where there is some teaching, suggestion, or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (703) 305-3973. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ronald Laneau  
Examiner  
Art Unit 3627

12/10/04

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